No. 57721-2-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

D.W. (d.o.b. 6/20/91),

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY
JUVENILE DIVISION

The Honorable Marsha V. Gross

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1

C. STATEMENT OF THE CASE.....2

1. Procedural history. 2

2. Testimony at fact-finding hearing. 3

3. Juvenile court ruling. 5

D. ARGUMENT.....6

1. REVERSAL IS REQUIRED BECAUSE THE STATE FAILED TO PROVE THE ABSENCE OF SELF-DEFENSE BEYOND A REASONABLE DOUBT. 6

(a) The State is required to prove the absence of self-defense beyond a reasomable doubt. 6

(b) D.W. was entitled to use force if she actually and reasonably believed she was Aabout to be injured.@ 8

(c) The juvenile court made findings of fact that were not supported by substantial evidence and were critical to its rejection of D.W.'s self-defense claim. 9

(c) The juvenile court employed an incorrect legal standard in analyzing D.W.'s claim of self-defense.....13

2. REVERSAL IS REQUIRED BECAUSE THE JUVENILE COURT FAILED TO FILE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO JuCrR 7.11(d). 15

(a) The juvenile court must enter written findings of fact and conclusions of law pursuant to JuCrR 7.11(d). 15

(b) The remedy is dismissal where D.W. can show prejudice. 16

(c) Reversal is required for inherent prejudice, and because the court's oral ruling is unclear as to the basis for the finding of guilt, and any subsequent written findings could not address this deficiency without tailoring the findings and conclusions to the issues raised on appeal. 17

E. CONCLUSION 23

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Acosta, 101 Wn.2d 612, 683 P.2d 1069 (1984).....7

State v. Allery, 101 Wn.2d 591, 682 P.2d 312 (1984). 9,12,19

State v. Alvarez, 128 Wn.2d 1, 904 P.2d 754 (1995).....15

State v. Baeza, 100 Wn.2d 487, 670 P.2d 646 (1983).....6

State v. Camarillo, 115 Wn.2d 60, 794 P.2d 850 (1990).....20

State v. Cowgill, 67 Wn. App. 239, 834 P.2d 677 (1992). 16

State v. Dyson, 90 Wn. App. 433, 952 P.2d 1097 (1998) 7

State v. Eaton, 82 Wn. App. 723, 919 P.2d 116 (1996). 16

State v. Head, 136 Wn.2d 619, 964 P.2d 1187 (1998) 16,22

State v. Hiatt, 187 Wash. 226, 60 P.2d 71 (1936).....14,21

State v. Janes, 121 Wn.2d 220, 850 P.2d 495, 22 A.L.R.5th 921 (1993) 9,12,19

State v. Lewis, 6 Wn. App. 38, 491 P.2d 1062 (1971). 14

State v. L.B., 132 Wn. App. 948, 135 P.3d 508 (2006). 14

State v. M.A., 106 Wn. App. 493, 23 P.3d 508 (2001). 10,11,20

State v. McCullum, 98 Wn.2d 484, 656 P.2d 1064 (1983). 7

State v. McGary, 37 Wn. App. 856, 683 P.2d 1125 (1984). 17

State v. Naranjo, 83 Wn. App. 300, 921 P.2d 588 (1996).....16

State v. Theroff, 95 Wn.2d 385, 622 P.2d 1240 (1980). 9

State v. Thetford, 109 Wn.2d 392, 745 P.2d 496 (1987). 10,11,20

State v. Redwine, 72 Wn.App. 625, 865 P.2d 552 (1994)..... 7

State v. Riley, 137 Wn.2d 904, 976 P.2d 624 (1999).....7

State v. Shelley, 85 Wn. App. 24, 929 P.2d 489 (1997). 8

State v. Smith, 68 Wn. App. 201, 842 P.2d 494 (1992). 16

State v. Walden, 131 Wn.2d 469, 932 P.2d 1237 (1997).....7

State v. Wanrow, 88 Wn.2d 221, 559 P.2d 548 (1977).....9

State v. Wilks, 70 Wn.2d 626, 424 P.2d 663 (1967). 16

State v. Witherspoon, 60 Wn. App. 569,
805 P.2d 248 (1991) 15,17,18

UNITED STATES SUPREME COURT CASES

Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39
(1979) 6

In re Winship, 397 U.S. 358, 90 S.Ct. 1068,
25 L.Ed.2d 368 (1970) 6

STATUTES AND COURT RULES

RCW 9A.16.020(3). 8,19

RCW 9A.36.041.....8

RCW 9A.16.010(1) 8

JuCrR 7.11(c) 15

JuCrR 7.11(d). ..... passim

PATTERN JURY INSTRUCTIONS

WPIC 17.02 9

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. 5 6

U.S. Const. amend. 14.....6

Wash. Const. art. I, ' 3.....6

A. ASSIGNMENTS OF ERROR

1. At D.W.'s adjudicatory hearing on a charge of fourth degree assault, the juvenile court erred in rejecting D.W.'s claim of self-defense, which the State did not disprove beyond a reasonable doubt.

2. In the alternative, the juvenile court's failure to enter written findings of fact and conclusions of law in violation of JuCrR 7.11(d) requires reversal of D.W.'s adjudication of guilty.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the juvenile court erred in rejecting D.W.'s claim of self-defense, where the court erroneously found that D.W. had not actually and reasonably believed that she was Aabout to be injured@ by the complainant, M.M.

2. Whether the juvenile court erred in rejecting D.W.'s claim of self-defense, where the court employed an incorrect legal standard, instead of the Aabout to be injured@ requirement of RCW 9A.16.020(3).

3. Whether the juvenile court erred in rejecting D.W.'s claim of self-defense, where the court employed an incorrect legal standard by assuming that D.W. had a duty to retreat.

4. Whether, in the alternative, the court's failure to enter written findings and conclusions, in violation of JuCrR 7.11(d), requires reversal of D.W.'s adjudication of guilty, where the court's oral ruling and the absence of written findings renders it impossible to determine the basis of the court's rejection of D.W.'s claim of self-defense.

C. STATEMENT OF THE CASE

1. <u>Procedural history</u>. D.W., a juvenile (d.o.b. 6/20/91), was charged in Whatcom County Superior Court, Juvenile Division, with fourth degree assault pursuant to RCW 9A.36.041. CP 19-20 (information). According to the affidavit of probable cause, M.M. told a sheriff's deputy that D.W. shoved M.M. into a wall, then slapped her and grabbed her throat. CP 17-18 (affidavit of probable cause). The Sheriff's deputy questioned D.W., who admitted striking M.M., but stated that M.M. had tried to slap her. CP 18.

D.W. was found guilty following a fact-finding hearing at which she raised her claim of self-defense. RP 1. The juvenile court did not file written findings of fact and conclusions of law as required by JuCrR 7.11(d). D.W. was given a disposition of three

months community supervision and 25 hours community service. RP 184; CP 10-16.

D.W. appeals her adjudication of guilty. CP 2-9.

2. <u>Testimony at fact-finding hearing</u>. The complainant M.M., an eighth grade student at Mount Baker Junior High School, testified that she was in the hallway of the school building on June 8, 2005, when she was approached by D.W., an eighth grade student with whom she had formerly been friends. RP 25, 30-32, 140. M.M. testified, Afrom what I can remember she hit me.@ RP 33. M.M. replied either by saying that she Adid not recall,@ or stated, Anot that I remember,@ when asked if she was hit with an open or closed fist, what side of her face she was hit on, how hard she was hit, or if she had done anything to D.W. before D.W. slapped her. RP 33-34. She stated that D.W. also grabbed her throat Awith two hands against the wall,@ but could not remember if she was already against the wall or if she was against the wall as a result of D.W. grabbing her. RP 36.

M.M. thought she recalled saying something to D.W. Abefore that day,@ but not before D.W. approached her. RP 39-40. M.M. was asked if she recalled having done anything to defend herself,

to which she replied that she did not, Abut a friend said that I had raised my arm once.@ RP 42. She answered, Anot that I remember@ when asked if she had attacked, hit, or scratched D.W., and denied that she had punched or bitten D.W. RP 42. When M.M. was asked if she had pushed D.W., M.M. replied, AUh, I don't think so, possibly.@ RP 42.

In the written statement she gave the sheriff's deputy who interviewed her, M.M. stated that somebody pulled D.W. off of her and that D.W. slapped her again. RP 59. Whatcom County Sheriff's Deputy Terrance Brown also interviewed D.W., who told him that she had acted in self-defense and that A[M.M.] had raised her hand as if to slap her.@ RP 99.

On cross-examination, defense counsel asked M.M. if she had slapped D.W. RP 65. M.M. responded, AUm, there's a possibility. But I kind of doubt it.@ RP 65. Counsel asked the complainant if she had attempted to strike D.W. and missed, to which M.M. replied, APossibly.@ RP 65.

D.W. testified that she approached M.M. to talk about her friend Pearl's suspension, and then M.M. raised her arm in the air, Aand it looked like she was going to swing at me.@ RP 131. D.W.

was about an arm's length away, and when M.M. raised her arm as if to slap D.W., D.W. pushed M.M.'s arm down and shoved her up against the wall in self-defense. RP 131. According to D.W., M.M. then Acame back at me,@ so D.W. Apushed her back again and then slapped her.@ RP 131-32. D.W. put her hand around M.M.'s neck when she pushed M.M. back, although she did not realize that when she did so she was squeezing M.M.'s neck. RP 132. The reason D.W. was holding M.M.'s neck was so that M.M. could not come at her again. RP 132. At that time M.M. Alooked like she was coming at me again@ to try and Acontinue the altercation.@ RP 134.

D.W. felt angry, upset, and sad. RP 135. However, she testified she had not been trying to start a fight with M.M. when she saw her in the hallway. RP 135. Shortly thereafter the school principal found D.W. and she went back to his office with him. RP 137-38. She later spoke with Deputy Brown, and she was as truthful with him as possible. RP 138.

3. <u>Juvenile court ruling</u>. The juvenile court found that on the day of the incident D.W. was angry because she believed that M.M. had been involved in getting D.W.'s friend Pearl suspended

from school, and that she was fearful that M.M. might say something to also get D.W. suspended. RP 164.

The court's ruling continued on to find D.W. guilty of fourth degree assault. RP 173-74. In the process of so ruling, the court made erroneous factual findings, and employed an incorrect legal standard. In addition, the basis for the court's finding of guilt became less clear as the court's oral ruling continued. Ultimately, the court's oral ruling and the lack of written findings makes it impossible to discern the court's actual basis for rejecting self-defense and finding guilt. RP 164-74.

D. ARGUMENT

1. REVERSAL IS REQUIRED BECAUSE THE STATE FAILED TO PROVE THE ABSENCE OF SELF-DEFENSE BEYOND A REASONABLE DOUBT.

(a) <u>The State is required to prove the absence of self-defense beyond a reasonable doubt</u>. Due process requires the State to prove every element of a charged crime beyond a reasonable doubt. U.S. Const. amend. 5; U.S. Const. amend. 14; Wash. Const. art. I, ' 3; <u>Sandstrom v. Montana</u>, 442 U.S. 510, 520, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979); <u>In re Winship</u>, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); <u>State v. Baeza</u>, 100

Wn.2d 487, 490, 670 P.2d 646 (1983). The respondent must first produce Asome@ evidence which supports her claim of self-defense. State v. Walden, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997). This evidence must show that Ashe had a good faith belief in the necessity of force and that that belief was objectively reasonable.@ State v. Dyson, 90 Wn. App. 433, 438-39, 952 P.2d 1097 (1998); see also State v. Riley, 137 Wn.2d 904, 909, 976 P.2d 624 (1999).

In Washington, it is well-established that since a claim of self-defense negates an essential element of assault B here, the defendant's unlawful intent B the burden is on the State to disprove self-defense beyond a reasonable doubt. State v. Redwine, 72 Wn.App. 625, 629, 865 P.2d 552 (1994) (citing State v. Acosta, 101 Wn.2d 612, 616, 683 P.2d 1069 (1984)). Once the accused produces some evidence of self-defense, the burden of proof returns to the State and the prosecution bears the burden of proving the absence of self-defense beyond a reasonable doubt. Walden, 131 Wn.2d at 473; Acosta, 101 Wn.2d at 619; State v. McCullum, 98 Wn.2d 484, 500, 656 P.2d 1064 (1983).

It is constitutional error to enter a judgment of guilty where the State has failed to meet its burden of proving the absence of self-defense. State v. Walden, 131 Wn.2d at 473. Thus, such an error can be raised for the first time on appeal. See State v. Redwine, 72 Wn. App. at 629.

(b) D.W. was entitled to use force if she actually and reasonably believed she was Aabout to be injured.@ According to the plain language of Wash. Rev. Code ' 9A.16.020(3), a person has a right to use force to defend himself or herself against danger of injury in preventing or attempting to prevent an offense against his or her person, where the force used is not more than is necessary. RCW 9A.16.020(3). The use, attempt, or offer to use force upon or toward the person of another is not unlawful

> [w]henever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person[1], or a malicious trespass, or other malicious interference with real or personal property lawfully in

[1]The harmful or offensive touching of another constitutes the offense of fourth degree assault. RCW 9A.36.041; State v. Shelley, 85 Wn. App. 24, 28-29, 929 P.2d 489, 491 (1997).

his or her possession, in case the force is not more than is necessary[.]

RCW 9A.16.020(3). Under RCW 9A.16.010(1), Anecessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended. See also WPIC 17.02 ("The use of force upon or toward the person of another is lawful when used by a person who reasonably believes that he is about to be injured and when the force is not more than is necessary@).

Thus, a defendant prevails where she had a (1) subjective, (2) reasonable, belief that she was about to be injured. State v. Janes, 121 Wn.2d 220, 238-39, 850 P.2d 495, 22 A.L.R.5th 921 (1993); State v. Allery, 101 Wn.2d 591, 594-95, 682 P.2d 312 (1984). However, it need not be the case that the defendant actually was about to be injured. State v. Theroff, 95 Wn.2d 385, 390, 622 P.2d 1240 (1980). Rather, the finder of fact must put itself in the shoes of the defendant to determine merely whether the defendant who actually perceived injury was reasonable in that belief, based on all the surrounding facts and circumstances as

they appeared to the defendant. State v. Janes, 121 Wn.2d at 238-39; State v. Allery, 101 Wn.2d at 594; State v. Wanrow, 88 Wn.2d 221, 235-36, 559 P.2d 548 (1977).

(c) The juvenile court made findings of fact that were not supported by substantial evidence and were critical to its rejection of D.W.'s self-defense claim. A juvenile court's findings of fact must be supported by substantial evidence. State v. M.A., 106 Wn. App. 493, 498, 23 P.3d 508 (2001). Substantial evidence is evidence sufficient to convince a fair-minded person of the truth of the matter. State v. Thetford, 109 Wn.2d 392, 396, 745 P.2d 496 (1987).

In its oral ruling, the juvenile court made a number of statements regarding the evidence and the events that occurred on the day in question. It is difficult to determine, with regard to many of these statements, whether the court was making credibility determinations, or was engaging in legal analysis regarding the sufficiency of the facts for purposes of self-defense.[2] However, among the court's statements were the following:

[2] D.W. also argues that the lack of clarity in the court's oral ruling, and the fact that the court violated JuCrR 7.11(d) by failing to set out written findings of fact and conclusions of law, requires reversal. See Part D.2, infra.

The court stated that there was Ano statement by [D.W. to the sheriff's deputy] regarding any kind of an assault@ by M.M. RP 169-70.

The court also stated, AThere is no evidence she [M.M.] tried to hit, no evidence [M.M.] tried to push, no evidence [M.M.] tried to kick, no bite, slap or do anything.@ RP 172.

Finally, the court stated, Aall [D.W.] said was [M.M.] raised her arm. There is no evidence that [M.M.] did swing it, swing her arm at [D.W.]. There is no evidence that [M.M.] tried to hit her, tried to slap her, tried to punch her.@ RP 171.

These findings were not supported by substantial evidence. D.W. testified at the fact-finding hearing that the complainant raised her arm in the air Aand it looked like she was going to swing at me.@ RP 131. Whatcom County Sheriff's Deputy Terrance Brown corroborated that D.W. told him that A[M.M.] had raised her hand as if to slap her.@ RP 99. The juvenile court's findings to the contrary were not supported by substantial evidence. State v. M.A., 106 Wn. App. at 498; State v. Thetford, 109 Wn.2d at 396.

In addition, the juvenile court stated, AAnd she did say that [M.M.] had raised her hand as if to slap her, but she never said to

the officer that she was afraid. That she thought she was in imminent danger.@ RP 169. The court also stated, D.W. Awas never in imminent danger. Uh, nor was she fearful of being in imminent danger.@ RP 170.

But D.W. specifically testified that when the complainant raised her arm in the air, Ait looked like she was going to swing at me.@ RP 131. And the deputy's testimony was that D.W. told him that when M.M. had raised her hand, it was Aas if to slap her.@ RP 99. The only reasonable inference from this testimony is that D.W. believed she was about to be struck by M.M.

Finally, the juvenile court stated, AShe didn't say that [M.M.] again tried a second time to come back at her.@ RP 169. This statement is erroneous -- D.W. testified she shoved M.M. against the wall to defend herself, but then, M.M. Acame back at me.@ (Emphasis added.) RP 131-32. D.W. specifically testified it Alooked like she was coming at me again@ in order to Acontinue the altercation.@ (Emphasis added.) RP 134.

These erroneous factual findings are fatal to the juvenile court's determination of guilt. The question whether M.M. acted in such a way as to place D.W. in actual and reasonable

apprehension that she was about to be struck is pivotal, because such a belief by D.W. would entitle her to use reasonable force to repel the attack. RCW 9A.16.020(3); State v. Janes, 121 Wn.2d at 238-39; State v. Allery, 101 Wn.2d at 594-95. If the court had not made these erroneous factual findings, it should have concluded that D.W. indeed had an actual and reasonable belief that she was about to be injured, and thus a right to use force under Washington law. Id.

(c) The juvenile court employed an incorrect legal standard in analyzing D.W.'s claim of self-defense. The juvenile court failed to analyze D.W.'s claim of self-defense under the correct legal standard. In finding guilt, the court stated the following regarding D.W.'s perception of possible battery or harm to her by M.M.: The court stated, "And she did say that [M.M.] had raised her hand as if to slap her, but she never said to the officer that she was afraid. That she thought she was in imminent danger." RP 169. The court also stated that D.W. "was never in imminent danger. Uh, nor was she fearful of being in imminent danger." RP 170. Finally, the court stated that D.W. used more force than

necessary because she could have decided to just Awalk away@ after being struck the first time by M.M. RP 174.

In making these statements, the court clearly was imposing a requirement that the respondent be in some state of Afear@ in order to raise, or to prevail on, a claim of self-defense. In so doing, the court imposed an incorrect standard, because there is no particular requirement that the accused must be in Afear@ of the complainant; rather, under the legal standard of RCW 9A.16.020(3) the State was required to prove beyond a reasonable doubt that D.W. did not actually and reasonably believe that she was Aabout to be injured.@ D.W. was not required to show that she was in Afear.@ Similarly, the court's apparent application of a standard of Aimminent danger@ misstates the law of self-defense as precisely stated under RCW 9A.16.020(3), which, again, only requires a belief that one is Aabout to be@ injured. Finally, D.W. was under no duty to walk away. No duty to retreat exists when one is feloniously assaulted in a place where she has a right to be. State v. Hiatt, 187 Wash. 226, 60 P.2d 71 (1936); State v. Lewis, 6 Wn. App. 38, 491 P.2d 1062 (1971).

The court employed an incorrect legal analysis of D.W.'s self-defense claim. Where the court imposes an incorrect legal standard of self-defense, reversal is required under the constitutional error doctrine. State v. L.B., 132 Wn. App. 948, 954, 135 P.3d 508 (2006).

2. REVERSAL IS REQUIRED BECAUSE THE JUVENILE COURT FAILED TO FILE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO JuCrR 7.11(d).

(a) The juvenile court must enter written findings of fact and conclusions of law pursuant to JuCrR 7.11(d). In juvenile criminal cases, JuCrR 7.11(c) provides that the respondent shall be found guilty or not guilty, and that the court shall state its findings of fact and enter its decision on the record, including the evidence relied upon. In addition, the juvenile court must enter written findings of fact and conclusions of law. JuCrR 7.11(d). This rule, which is mandatory, provides as follows:

> The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and

> the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.

JuCrR 7.11(d). The mandatory language of the rule is unambiguous. State v. Alvarez, 128 Wn.2d 1, 16, 904 P.2d 754 (1995); see also State v. Witherspoon, 60 Wn. App. 569, 570, 805 P.2d 248 (1991) (AJuCrR 7.11(d) is crystal clear@). The purpose of the rule is to ensure adequate appellate review. State v. Naranjo, 83 Wn. App. 300, 303, 921 P.2d 588 (1996). The prosecution in D.W.'s case had a responsibility to file proposed written findings. State v. Wilks, 70 Wn.2d 626, 628, 424 P.2d 663 (1967).

(b) The remedy is dismissal where D.W. can show prejudice. Failure to strictly comply with JuCrR 7.11(d) does not lead to automatic reversal. State v. Cowgill, 67 Wn. App. 239, 241, 834 P.2d 677 (1992). Normally, the appropriate remedy is remand for entry of findings and conclusions. State v. Head, 136 Wn.2d 619, 622-23, 964 P.2d 1187 (1998) (interpreting parallel CrR 6.1(d)). However, dismissal is required if the juvenile makes a showing of prejudice. Head, 136 Wn.2d at 624-25.

When findings are entered after the appellant has filed the opening brief, the appellant can argue that the findings raise the appearance of unfairness or that they are tailored to meet the errors asserted on appeal. See State v. Smith, 68 Wn. App. 201, 209-10, 842 P.2d 494 (1992). There is no appearance of unfairness if the written findings and conclusions track the oral opinion on the issues material to the appeal. State v. Eaton, 82 Wn. App. 723, 727, 919 P.2d 116 (1996). But if the findings address issues raised in the opening brief, there is an appearance of unfairness compelling reversal. State v. Witherspoon, 60 Wn. App. at 572.

(c) Reversal is required for inherent prejudice, and because the court's oral ruling is unclear as to the basis for the finding of guilt, and any subsequent written findings could not address this deficiency without tailoring the findings and conclusions to the issues raised on appeal. Simple remand for entry of findings is not appropriate in this case. First, in general, the practice of permitting findings to be entered after the appellant has framed the issues in her brief creates an appearance of

unfairness. State v. Witherspoon, 60 Wn. App. at 572 (citing State v. McGary, 37 Wn. App. 856, 683 P.2d 1125 (1984)).

Second, if this Court were to merely remand for entry of findings, D.W. would suffer delay in a colorable challenge to her adjudication that would result in rendering any relief from her disposition either lessened or even possibly moot. State v. Witherspoon, 60 Wn. App. at 572. In Witherspoon, the Court stated,

> Witherspoon must be afforded an opportunity to assign error to the written findings after they are entered. This may necessitate supplementation of the briefs and the record. This court would then be required to revisit the case in order to address all of the assignments of error. This process would obviously take some time. If, upon its completion, we were to rule in Witherspoon's favor, we could not afford him the same relief we can now, because he is continuing to serve the term of confinement. This is real prejudice and it is not due to any fault of Witherspoon or his counsel. In our judgment, the only just result is to reverse and order dismissal of the charge.

Witherspoon, 60 Wn. App. at 572. This reasoning applies here. In the present case, D.W. continues to be under an obligation to perform the 25 hours of Acommunity restitution (service) work@ as ordered by the juvenile court. RP 184; CP 13. If this Court were to

later agree that D.W. is entitled to reversal of the adjudication of guilty and the disposition, D.W. would likely have already completed a greater portion or even the entirety of a disposition later vacated.

Primarily, however, reversal is required because the juvenile court's oral ruling prevents the appellate court from discerning the basis for the court's finding of guilt, and specifically, for the court's rejection of D.W.'s claim of self-defense. The court's oral ruling makes it impossible to determine, inter alia, whether the court disbelieved the claim by D.W. that M.M. raised her arm, whether it disbelieved the claim by D.W. that she perceived this as an attempt by M.M. to strike D.W., whether such a perception was unreasonable, whether D.W. believed that M.M. then tried to assault her again, whether such a claim was credible, or whether it was reasonable.

The juvenile court needed to make specific findings of fact and then to apply self-defense law to those facts. RCW 9A.16.020(3) provides that a person has a right to use force to defend himself against what he actually and reasonably perceives to be danger of injury. RCW 9A.16.020(3); State v. Janes, 121 Wn.2d at 238-39; State v. Allery, 101 Wn.2d at 594-95.

Given D.W.'s arguments that reversal is required because of the lack of clarity of the court's oral ruling and the absence of findings clarifying the court's reasoning, it is necessary to set out the ruling in its entirety, which appears at Appendix A (attached). See RP 164-74.

In this ruling, the juvenile court made a number of statements with which D.W. takes issue. It is difficult to determine whether, with regard to many of these statements, the court was making credibility determinations, or was engaging in legal analysis regarding the sufficiciency of the facts under self-defense law. For example, as discussed at Part D.1, supra, the court made erroneous statements regarding the question whether M.M. raised her arm toward D.W. and whether this was an attempt to strike D.W. The juvenile court also made a number of other statements in its oral ruling regarding either the fact, or the legal adequacy, of D.W.'s perception of possible battery or harm to her by M.M.

Because of the lack of compliance with JuCrR 7.11(d), none of the statements that the court made in its oral ruling are carefully set out as written findings of fact, and conclusions of law. As a result, the basis for the juvenile court's finding of guilt and

specifically for its rejection of D.W.'s defense of self defense, is unclear. Was the juvenile court finding that D.W. was not credible in her statements that D.W. had raised her arm? Was the court finding that D.W.'s statements, that she perceived that M.M. raised her arm as if to slap, swing at, or strike D.W., were not credible? If so, the respondent must lose on appeal, because "[c]redibility determinations are for the trier of fact and cannot be reviewed on appeal." State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). But if the court was finding that M.M. did not raise her arm, or that this action by M.M. was not adequate to make a person like D.W. believe she was about to be struck, these findings would be erroneous, and contrary to the law, in which case reversal is required. State v. M.A., 106 Wn. App. at 498; State v. Thetford, 109 Wn.2d at 396; RCW 9A.16.020(3).

In addition, it is not clear that the juvenile court analyzed D.W.'s claim of self-defense under the correct legal standard. Was the court imposing a requirement that the respondent be in Afear@ in order to raise, or to prevail on, a claim of self-defense? If so, the court imposed an incorrect standard, because there is no particular requirement that the accused must be in Afear@ of the complainant.

D.W. only needed to show that she believed a battery was about to occur, and was not required to come forward with evidence that she was in Afear.@ Similarly, the court's apparent application of a standard of Aimminent danger@ misstates the law of self-defense as precisely stated under RCW 9A.16.020(3). Finally, was the court imposing a duty to retreat? If so, this was also the application of an incorrect legal standard. State v. Hiatt, supra.

None of the oral statements by the juvenile court were set out as written findings of fact and conclusions of law. Had JuCrR 7.11(d) been followed, the court would have been required to enter a more careful set of written findings, distinguishing between facts found and legal conclusions, and setting out the precise basis for the court's rejection of the self-defense claim. The absence of such findings and conclusions clearly and prejudicially impacts D.W.'s ability to file an appeal. State v. Head, 136 Wn.2d at 624. Specifically, the gravamen of the non-compliance with JuCrR 7.11(d) in this case, and the inadequacy of a routine remedy of remand for entry of findings, is that if this Court merely ordered remand, the written findings and conclusions could be Atailored@ by the prosecutor to find guilt in a manner that wends its way through

the court's oral ruling and picks and chooses among various statements so as to avoid reliance on erroneous findings or erroneous legal analyses. And because the court's oral ruling is subject to so many varying and conflicting interpretations, the prosecutor could succeed in characterizing certain statements as credibility findings, or conclusions as to the reasonableness of D.W.'s perceptions, as necessary to find guilt. This should not be allowed. This Court should decide that the absence of findings requires reversal of D.W.'s adjudication of guilty on the charge of fourth degree assault.

E. CONCLUSION

Based on the foregoing, D.W. asks this Court to reverse her adjudication of guilty to the charge of fourth degree assault.

Respectfully submitted this 20th day of July 2006.

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